IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Rakesh Kumar Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.930/2001)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 30-10-2001 in Sessions Case No.121/2001 passed by Sh. Bhagwandas, RHJS, Additional Sessions Judge (Fast Track) No.2 Kota.

Date of Judgment: January 04, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. S.K.Jain, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Rakesh Kumar, the appellant herein, was placed on trial before Learned Additional Sessions Judge No.2 (Fast Track) Kota, who vide judgment dated October 30, 2001, convicted and sentenced him under section 376 IPC to undergo 10 years rigorous imprisonment and fine of Rs.5,000/-, in default to further suffer six months simple imprisonment.

2. It is the prosecution case that appellant committed rape on the prosecutrix Neeta (fictitious name), who suffered Polio on her legs and hands. After she became pregnant this fact came in the knowledge of her mother and elder brother. A written report thereafter submitted to SP Kota (Rural) who forwarded it to Police Station Suket on June 11, 1999. Case under Section 376 IPC was registered. The prosecutrix was subjected to medical examination, statements of witnesses were recorded, necessary

memos were drawn, the appellant was arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2 Kota. Charge under section 376 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 9 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. It is contended by learned counsel for the appellant that the prosecutrix and the appellant both were teenagers on the date of incident and sexual intercourse was committed by the appellant with the consent of the prosecutrix. The report was lodged after the prosecutrix had pregnancy of six months. Thus no offence under section 376 IPC is established.

4. In order to appreciate the argument of learned counsel, I closely scanned the material on record. It is no doubt true that as per medical examination report Ex.P-6 the prosecutrix was pregnant and had foetus of 26 weeks but it appears from the testimony of prosecutrix that the appellant took undue advantage of the situation. Handicapped girl of 16 years was forced by the appellant to satisfy his lust. Delay in lodging FIR under these circumstances is immaterial and the charge under section 376 IPC is established.

5. That takes me to the sentence awarded to the appellant. On considering the testimony of prosecutrix, I notice that in her statement she

admitted that the appellant used to take her to his room and commit sexual intercourse with her many a times and she used to return from his room alone. In such a situation this possibility that the appellant, in his youthful exuberance, obtained her consent on the pretext of marrying her, cannot be ruled out. Taking an overall view of the fact situation, I am of the opinion that the sentence of ten years awarded to the appellant is too harsh. The ends of justice would be met in reducing the sentence from 10 years to seven years rigorous imprisonment and fine.

6. As a result of above discussion, I partly allow the appeal and while confirming the conviction of appellant under section 376 IPC I reduce the sentence from ten years and fine of Rs.5,000/- to seven years rigorous imprisonment and fine of Rs.100/- in default to further suffer fifteen days simple imprisonment.

The impugned judgment of learned trial court stands modified as indicated above.

(Shiv Kumar Sharma)J.

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